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20SL-CC03616 - EBONI C JANUARY ET AL V INVASIX, INC., D/B/A ET AL (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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All Entries

08/31/2020 ☐ **Note to Clerk eFiling****Filed By:** HELMUT STARR☐ **Motion for Continuance**

Entry of Appearance and Consent Motion for Additional Time; Electronic Filing Certificate of Service.

Filed By: HELMUT STARR**On Behalf Of:** INMODE AESTHETIC SOLUTIONS**08/28/2020** ☐ **Exhibit Filed**

Exhibit A on behalf of Defendant Balboa Capital Corporation; Electronic Filing Certificate of Service.

Filed By: ROBERT WILLIAM STEPHENS**On Behalf Of:** BALBOA CAPITAL CORPORATION☐ **Memorandum Filed**

Memorandum in Support on behalf of Defendant Balboa Capital Corporation; Electronic Filing Certificate of Service.

Filed By: ROBERT WILLIAM STEPHENS☐ **Motion to Dismiss****Filed By:** ROBERT WILLIAM STEPHENS☐ **Entry of Appearance Filed**

Appearance of Robert W Stephens for Defendant Balboa Capital Corporation; Electronic Filing Certificate of Service.

Filed By: ROBERT WILLIAM STEPHENS**08/21/2020** ☐ **Answer Filed**

Answer and Affirmative Defenses to Plaintiffs Petition; Electronic Filing Certificate of Service.

Filed By: RANDALL F. SCHERCK**On Behalf Of:** PAWNEE LEASING CORPORATION**08/19/2020** ☐ **Summons Personally Served**

Document ID - 20-SMCC-6279; Served To - BALBOA CAPITAL CORPORATION; Server - ; Served Date - 29-JUL-20; Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served

08/18/2020 ☐ **Corporation Served**

Document ID - 20-SMOS-618; Served To - STERNS BANK NATIONAL ASSOCIATION D/B/A STERNS BANK EQUIPMENT; Server - ; Served Date - 06-AUG-20; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

☐ [Notice of Service](#)

Memorandum to court with return of service on Stearns Bank; Electronic Filing Certificate of Service.

Filed By: STEVEN S. FLUHR

On Behalf Of: EBONI C. JANUARY, EJKJ, LLC

08/12/2020 ☐ [Entry of Appearance Filed](#)

Entry of Appearance; Electronic Filing Certificate of Service.

Filed By: RANDALL F. SCHERCK

On Behalf Of: PAWNEE LEASING CORPORATION

08/10/2020 ☐ [Corporation Served](#)

Document ID - 20-SMCC-6280; Served To - PAWNEE LEASING CORPORATION; Server - ; Served Date - 24-JUL-20; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served

07/30/2020 ☐ [Agent Served](#)

Document ID - 20-SMCC-6542; Served To - INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS; Server - CT CORP; Served Date - 30-JUL-20; Served Time - 00:00:00; Service Type - Territory 30; Reason Description - Served; Service Text - L/C

07/22/2020 ☐ [Alias Summons Issued](#)

Document ID: 20-SMCC-6542, for INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

07/21/2020 ☐ [Note to Clerk eFiling](#)

Filed By: STEVEN S. FLUHR

☐ [Memorandum Filed](#)

Memorandum to Court for payment of fee.

Filed By: STEVEN S. FLUHR

On Behalf Of: EBONI C. JANUARY, EJKJ, LLC

☐ [Judge/Clerk - Note](#)

NO SUMMONS ISSUED DUE TO MISSING FEE. PLEASE RESUBMIT REQUEST WITH \$36 FOR SERVICE BY ST LOUIS COUNTY SHERIFF OR A SPECIAL PROCESS SERVER FORM WITH THE SECOND PAGE ATTACHED.

07/20/2020 ☐ [Alias Summons Requested](#)

Memorandum requesting service of process on Invasix, Inc.

Filed By: STEVEN S. FLUHR

On Behalf Of: EBONI C. JANUARY, EJKJ, LLC

☐ [Petition:](#)

Petition for Damages.

On Behalf Of: EBONI C. JANUARY, EJKJ, LLC

07/15/2020 ☐ [Summ Issd- Circ Pers Serv O/S](#)

Document ID: 20-SMOS-618, for STERNS BANK NATIONAL ASSOCIATION D/B/A STERNS BANK EQUIPMENT. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-6280, for PAWNEE LEASING CORPORATION. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-6279, for BALBOA CAPITAL CORPORATION. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ [Summons Issued-Circuit](#)

Document ID: 20-SMCC-6278, for INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

07/09/2020 ☐ **Confid Filing Info Sheet Filed**

Filed By: STEVEN S. FLUHR

☐ **Confid Filing Info Sheet Filed**

Confidential case filing information sheet.

Filed By: STEVEN S. FLUHR

On Behalf Of: EBONI C. JANUARY, EJKJ, LLC

☐ [Pet Filed in Circuit Ct](#)

Petition for Fraud and Misrepresentation.

☐ **Judge Assigned**

DIV 21

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
 TWENTY-FIRST JUDICIAL CIRCUIT
 STATE OF MISSOURI

DR. EBONI C. JANUARY,)	
Individually,)	
)	
And)	
)	
EJKJ, LLC,)	
A Limited Liability Company,	)	Cause No.:
)	
Plaintiffs,	)	Division:
)	
Vs.)	
)	
INVASIX, INC., a Delaware Corporation,)	
d/b/a INMODE AESTHETIC)	
SOLUTIONS ("INMODE"),)	
Serve: Missouri Secretary of State)	
600 W. Main St.)	
Jefferson City, MO 65101,)	
)	
BALBOA CAPITAL CORPORATION,)	
a California Corporation,)	
Serve: Registered Agent Solutions, Inc.)	
3225-A Emerald Lane)	
Jefferson City, MO 65109)	
)	
STEARNS BANK NATIONAL ASSOCIATION,)	
d/b/a STEARNS BANK EQUIPMENT FINANCE)	
DIVISION, a Minnesota Corporation,)	
Serve: Kelly Skalicky)	
4191 2 nd Street South)	
St. Cloud, MN 56301,)	
)	
And)	
)	
PAWNEE LEASING CORPORATION,)	
a Colorado corporation,)	
Serve: CSC-Lawyers Incorporating Service)	
221 Bolivar Street)	
Jefferson City, MO 65101,)	
)	
Defendants.)	

PETITION FOR DAMAGES (FRAUD)

COME NOW Plaintiffs and for their cause of action, state as follows:

1. That Plaintiff Dr. Eboni C. January is an individual licensed to practice medicine in the State of Missouri, with her principal place of business at 3915 Watson Road, St. Louis, Missouri 63109.

2. That Plaintiff EJKJ, LLC is a limited liability company in good standing formed in accordance with Missouri law, with its principal place of business at 910 Morrison Ave., St. Louis, Missouri 63104.

3. That Defendant INVASIX, INC. is a Delaware corporation in good standing, registered to do business in Missouri as INMODE AESTHETIC SOLUTIONS (hereafter "INMODE"), with its principal office in the United States at 20996 Bake Parkway, Suite 106, Lake Forest, California 92630.

4. That Defendant BALBOA CAPITAL CORPORATION is incorporated in the State of California and registered to do business in the State of Missouri.

5. That Defendant STEARNS BANK NATIONAL ASSOCIATION is a national bank with its main office in St. Cloud, Minnesota and does business as STEARNS EQUIPMENT FINANCE DIVISION in the State of Missouri.

6. That PAWNEE LEASING CORPORATION is a Colorado corporation in good standing and registered to do business in Missouri.

7. That venue is proper in the Circuit Court of St. Louis County because St. Louis County is the county where Plaintiffs were injured by the wrongful acts, misrepresentation and/or fraud alleged herein, and the Defendants transacted business in this state by selling equipment and financing equipment in this state.

8. That on March 1, 2019, Plaintiff EJKJ, LLC executed a Customer Purchase Agreement with Defendant InMode, for the purchase of various pieces of medical equipment for a total price of \$135,000. Included in the Agreement, in addition to certain equipment, was a printed and electronic marketing kit. (see Customer Purchase Agreement attached hereto as Exhibit 1).

9. That on March 1, 2019, Plaintiff EJKJ, LLC executed a second Customer Purchase Agreement with Defendant InMode, for additional pieces of medical equipment for a total price of \$80,000.00. Included in said Agreement, in addition to certain equipment, was a Spark Marketing Program. (See Customer Purchase Agreement attached hereto as Exhibit 2).

10. As part of the transaction to purchase the equipment, Plaintiff EJKJ, LLC was required to enter into an Equipment Finance Agreement No. 294119-000 with Balboa Capital for the financing of the equipment listed in Plaintiff's Exhibit 1 (see Equipment Finance Agreement attached hereto as Exhibit 3).

11. As part of the transaction to purchase the equipment, Plaintiff EJKJ, LLC was required to enter an Equipment Finance Agreement with Defendant Pawnee Leasing Corporation.

12. That sometime after that Defendant InMode indicated Plaintiffs would need a Body Tite Pro RFAL Work Station to properly conduct its business and Plaintiffs signed an agreement to purchase said equipment in the amount of \$138,786.58.

13. As part of the transaction to purchase the Body Tite Pro RFL Work Station, Plaintiffs were required to enter into an equipment lease with Defendant Stearns Bank, N.A.

14. That as an inducement for Plaintiffs to enter into the aforesaid Agreements, all Defendants represented to Plaintiffs, among other things, that:

- (a) The equipment would pay for itself;
- (b) Marketing would be done by the Defendants;
- (c) InMode would put Plaintiffs on the physician list;
- (d) The equipment would not burn women of darker skin color;
- (e) The equipment was completely safe; and
- (f) The financing agreements had to be signed to make the purchase.

15. That at the time Defendants made the aforesaid representations, Defendants knew those representations to be false, and were in fact false.

16. That Defendants made the representations with the intent that Plaintiffs rely upon such representations.

17. That Plaintiffs did rely on said representations as they were material to their purchasing said equipment.

18. That as a direct and proximate result of the fraud aforesaid, Plaintiffs incurred financial obligations over \$250,000.00 to build a business upon said representations, and incurred embarrassment and stains upon Plaintiff EJKJ, LLC and Dr. January's reputation as a licensed and elite physician.

19. That Defendants' actions were done recklessly and without regard to the rights of Plaintiffs.

WHEREFORE, Plaintiffs pray for judgment against Defendants jointly and severally in a reasonable sum to compensate them for the injuries incurred in an amount over \$25,000.00, for punitive damages to deter Defendants and others like them from

such actions, for an order rescinding the agreements, for their costs herein incurred and expended, and for such other relief as the Court deems just and proper.

Respectfully submitted,

FLUHR & MOORE, LLC.

/s/ Steven S. Fluhr
Steven S. Fluhr, MO BAR#34365
9322 Manchester Road
St. Louis, MO 63119
(314)725-8002/Fax (314)725-8006
fluhrstl@aol.com
Attorney for Plaintiffs,
Dr. Eboni C. January and EJKJ, LLC



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: BALBOA CAPITAL CORPORATION

Alias:

R/A SOLUTIONS, INC
3225-A EMERALD LANE
JEFFERSON CITY, MO 65109

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

15-JUL-2020

Date

Further Information:

LES

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- ☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the “neutral,” who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator’s decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616	
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119	
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105	
Nature of Suit: CC Other Tort		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS

Alias:

DBA: INMODE AESTHETIC SOLUTIONS

MISSOURI SECRETARY OF STATE
600 W. MAIN ST
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

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15-JUL-2020

Date

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LES

Clerk

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- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

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CCADM73

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CCADM73



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: PAWNEE LEASING CORPORATION

Alias:

CSC-LAWYERS INC SERVICE
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

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15-JUL-2020

Date

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Clerk

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- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- ☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the “neutral,” who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator’s decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

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(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616	(Date File Stamp)
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address: STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119	
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105	
Nature of Suit: CC Other Tort		

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: STERNS BANK NATIONAL ASSOCIATION D/B/A STERNS BANK EQUIPMENT

Alias:

DBA: STEARNS BANK EQUIPMENT FINANCE

KELLY SKALICKY
4191 2ND STREET SOUTH
ST. CLOUD, MN 56301

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

15-JUL-2020

Date

Further Information:

LES

Jean P. Lilley
Clerk

Officer's or Server's Affidavit of Service

I certify that:

1. I am authorized to serve process in civil actions within the state or territory where the above summons was served.
2. My official title is _____ of _____ County, _____ (state).
3. I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other (describe) _____

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
☐ the judge of the court of which affiant is an officer.
☐ authorized to administer oaths in the state in which the affiant served the above summons.
 (use for out-of-state officer)
☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion and/or petition must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion and/or petition when offered to him, the return shall be prepared to show the offer of the officer to deliver the summons and motion and/or petition and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the individual personally or by leaving a copy of the summons and motion and/or petition at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and motion and/or petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion and/or petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. On a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory in the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri Court within 30 days after service.

THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

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CCADM73

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

DR. EBONI C. JANUARY,)	
Individually,)	
)	
And)	
)	
EJKJ, LLC,)	
A Limited Liability Company,	)	Cause No.: 20SL-CC03616
)	
Plaintiffs,	)	Division: 21
)	
Vs.)	
)	
INVASIX, INC., a Delaware Corporation,)	
d/b/a INMODE AESTHETIC)	
SOLUTIONS ("INMODE"),)	
Serve: CT Corporation System, Reg. Agent)	
120 S. Central Ave.)	
Clayton, MO 63105,)	
)	
BALBOA CAPITAL CORPORATION,)	
a California Corporation,)	
Serve: Registered Agent Solutions, Inc.)	
3225-A Emerald Lane)	
Jefferson City, MO 65109)	
)	
STEARNS BANK NATIONAL ASSOCIATION,)	
d/b/a STEARNS BANK EQUIPMENT FINANCE)	
DIVISION, a Minnesota Corporation,)	
Serve: Kelly Skalicky)	
4191 2 nd Street South)	
St. Cloud, MN 56301,)	
)	
And)	
)	
PAWNEE LEASING CORPORATION,)	
a Colorado corporation,)	
Serve: CSC-Lawyers Incorporating Service)	
221 Bolivar Street)	
Jefferson City, MO 65101,)	
)	
Defendants.)	

MEMORANDUM TO COURT

COME NOW Plaintiffs, by and through counsel, and request summons be issued for service of process upon Defendant Invasix, Inc., d/b/a InMode Aesthetic Solutions ("InMode") by serving CT Corporation System, its Registered Agent, 120 S. Central Ave., Clayton, MO 63105.

Respectfully submitted,

FLUHR & MOORE, LLC.

/s/ Steven S. Fluhr
Steven S. Fluhr, MO BAR#34365
9322 Manchester Road
St. Louis, MO 63119
(314)725-8002/Fax (314)725-8006
fluhrstl@aol.com
Attorney for Plaintiffs,
Dr. Eboni C. January and EJKJ, LLC

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

DR. EBONI C. JANUARY,)	
Individually,)	
)	
And)	
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EJKJ, LLC,)	
A Limited Liability Company,)	Cause No.: 20SL-CC03616
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Plaintiffs,)	Division: 21
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Vs.)	
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INVASIX, INC., a Delaware Corporation,)	
d/b/a INMODE AESTHETIC)	
SOLUTIONS ("INMODE"),)	
Serve: CT Corporation System, Reg. Agent)	
120 S. Central Ave.)	
Clayton, MO 63105,)	
)	
BALBOA CAPITAL CORPORATION,)	
a California Corporation,)	
Serve: Registered Agent Solutions, Inc.)	
3225-A Emerald Lane)	
Jefferson City, MO 65109)	
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And)	
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PAWNEE LEASING CORPORATION,)	
a Colorado corporation,)	
Serve: CSC-Lawyers Incorporating Service)	
221 Bolivar Street)	
Jefferson City, MO 65101,)	
)	
Defendants.)	

PETITION FOR DAMAGES (FRAUD)

COME NOW Plaintiffs and for their cause of action, state as follows:

1. That Plaintiff Dr. Eboni C. January is an individual licensed to practice medicine in the State of Missouri, with her principal place of business at 3915 Watson Road, St. Louis, Missouri 63109.

2. That Plaintiff EJKJ, LLC is a limited liability company in good standing formed in accordance with Missouri law, with its principal place of business at 910 Morrison Ave., St. Louis, Missouri 63104.

3. That Defendant INVASIX, INC. is a Delaware corporation in good standing, registered to do business in Missouri as INMODE AESTHETIC SOLUTIONS (hereafter "INMODE"), with its principal office in the United States at 20996 Bake Parkway, Suite 106, Lake Forest, California 92630.

4. That Defendant BALBOA CAPITAL CORPORATION is incorporated in the State of California and registered to do business in the State of Missouri.

5. That Defendant STEARNS BANK NATIONAL ASSOCIATION is a national bank with its main office in St. Cloud, Minnesota and does business as STEARNS EQUIPMENT FINANCE DIVISION in the State of Missouri.

6. That PAWNEE LEASING CORPORATION is a Colorado corporation in good standing and registered to do business in Missouri.

7. That venue is proper in the Circuit Court of St. Louis County because St. Louis County is the county where Plaintiffs were injured by the wrongful acts, misrepresentation and/or fraud alleged herein, and the Defendants transacted business in this state by selling equipment and financing equipment in this state.

8. That on March 1, 2019, Plaintiff EJKJ, LLC executed a Customer Purchase Agreement with Defendant InMode, for the purchase of various pieces of medical equipment for a total price of \$135,000. Included in the Agreement, in addition to certain equipment, was a printed and electronic marketing kit. (see Customer Purchase Agreement attached hereto as Exhibit 1).

9. That on March 1, 2019, Plaintiff EJKJ, LLC executed a second Customer Purchase Agreement with Defendant InMode, for additional pieces of medical equipment for a total price of \$80,000.00. Included in said Agreement, in addition to certain equipment, was a Spark Marketing Program. (See Customer Purchase Agreement attached hereto as Exhibit 2).

10. As part of the transaction to purchase the equipment, Plaintiff EJKJ, LLC was required to enter into an Equipment Finance Agreement No. 294119-000 with Balboa Capital for the financing of the equipment listed in Plaintiff's Exhibit 1 (see Equipment Finance Agreement attached hereto as Exhibit 3).

11. As part of the transaction to purchase the equipment, Plaintiff EJKJ, LLC was required to enter an Equipment Finance Agreement with Defendant Pawnee Leasing Corporation.

12. That sometime after that Defendant InMode indicated Plaintiffs would need a Body Tite Pro RFAL Work Station to properly conduct its business and Plaintiffs signed an agreement to purchase said equipment in the amount of \$138,786.58.

13. As part of the transaction to purchase the Body Tite Pro RFL Work Station, Plaintiffs were required to enter into an equipment lease with Defendant Stearns Bank, N.A.

14. That as an inducement for Plaintiffs to enter into the aforesaid Agreements, all Defendants represented to Plaintiffs, among other things, that:

- (a) The equipment would pay for itself;
- (b) Marketing would be done by the Defendants;
- (c) InMode would put Plaintiffs on the physician list;
- (d) The equipment would not burn women of darker skin color;
- (e) The equipment was completely safe; and
- (f) The financing agreements had to be signed to make the purchase.

15. That at the time Defendants made the aforesaid representations, Defendants knew those representations to be false, and were in fact false.

16. That Defendants made the representations with the intent that Plaintiffs rely upon such representations.

17. That Plaintiffs did rely on said representations as they were material to their purchasing said equipment.

18. That as a direct and proximate result of the fraud aforesaid, Plaintiffs incurred financial obligations over \$250,000.00 to build a business upon said representations, and incurred embarrassment and stains upon Plaintiff EJKJ, LLC and Dr. January's reputation as a licensed and elite physician.

19. That Defendants' actions were done recklessly and without regard to the rights of Plaintiffs.

WHEREFORE, Plaintiffs pray for judgment against Defendants jointly and severally in a reasonable sum to compensate them for the injuries incurred in an amount over \$25,000.00, for punitive damages to deter Defendants and others like them from

such actions, for an order rescinding the agreements, for their costs herein incurred and expended, and for such other relief as the Court deems just and proper.

Respectfully submitted,

FLUHR & MOORE, LLC.

/s/ Steven S. Fluhr
Steven S. Fluhr, MO BAR#34365
9322 Manchester Road
St. Louis, MO 63119
(314)725-8002/Fax (314)725-8006
fluhrstl@aol.com
Attorney for Plaintiffs,
Dr. Eboni C. January and EJKJ, LLC

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

DR. EBONI C. JANUARY,)	
Individually,)	
)	
And)	
)	
EJKJ, LLC,)	
A Limited Liability Company,)	Cause No.: 20SL-CC03616
)	
Plaintiffs,)	Division: 21
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d/b/a STEARNS BANK EQUIPMENT FINANCE)	
DIVISION, a Minnesota Corporation,)	
)	
And)	
)	
PAWNEE LEASING CORPORATION,)	
a Colorado corporation,)	
)	
Defendants.)	

MEMORANDUM TO COURT

COME NOW Plaintiffs, by and through counsel, and hereby pay \$36.00 fee for service of Summons and Petition by St. Louis County Sheriff Defendant Invasix, Inc., d/b/a InMode Aesthetic Solutions ("InMode") by serving CT Corporation System, its Registered Agent, 120 S. Central Ave., Clayton, MO 63105.

Respectfully submitted,

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/s/ Steven S. Fluhr
Steven S. Fluhr, MO BAR#34365
9322 Manchester Road
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fluhrstl@aol.com
Attorney for Plaintiffs,
Dr. Eboni C. January and EJKJ, LLC



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

**SHERIFF FEE
PAID**

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS

Alias:

DBA: INMODE AESTHETIC SOLUTIONS

CT CORPOARATION SYSTEM
REGISTERED AGENT
120 S. CENTRAL AVE
CLAYTON, MO 63105

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

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22-JUL-2020

Date

Further Information:

GB

Joan P. Silman
Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

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Twenty First Judicial Circuit

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(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

SHERIFF FEE
PAID

(Date File Stamp)


Summons in Civil Case

The State of Missouri to: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS
Alias:
DBA: INMODE AESTHETIC SOLUTIONS

CT CORPORATION SYSTEM
REGISTERED AGENT
120 S. CENTRAL AVE
CLAYTON, MO 63105

38 COR
W

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

22-JUL-2020
Date

Further Information:
GB

Joan M. Gilmer
Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

LCW - B. LOVE

(name)

INTAKE SPECIALIST

(title)

☐ otherServed at St. Louis County CT CORPORATION (County/City of St. Louis), MO, on JUL 3 0 2020 (date) at 9 AM (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

FILED

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

FILED

AUG 10 2020

JOAN M. GILMER

CIRCUIT CLERK, ST. LOUIS COUNTY

RECEIVED

JUL 23 2020

COLE COUNTY
SHERIFF'S OFFICE

(Date File Stamp)

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

Summons in Civil Case

The State of Missouri to: PAWNEE LEASING CORPORATION

Alias:

CSC-LAWYERS INC SERVICE
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

15-JUL-2020

Date

Further Information:

LES

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

CSC Lawyers, S.L. (name) designee (title).

☐ other _____

Served at 350 E. High (address)

in Cole (County/City of St. Louis), MO, on 07-24-2020 (date) at 800AM (time).

Sheriff John P. Wheeler

Printed Name of Sheriff or Server

By

Sgt Anne Wray

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

2122
\$30

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

DR. EBONI C. JANUARY, Individually,)	
And EJKJ, LLC, A Limited Liability Company,)	
)	
Plaintiffs,	)	Cause No. 20SL-CC03616
)	
vs.	)	Division No.
)	
INVASIX, INC., d/b/a INMODE AESTHETIC)	
SOLUTIONS, et al.,)	
)	
Defendants.)	

ENTRY OF APPEARANCE

COMES NOW Randall F. Scherck, and the law firm of GREENSFELDER, HEMKER & GALE, P.C., and hereby enter their appearance on behalf of Defendant Pawnee Leasing Corporation with respect to the above-captioned matter.

Dated: August 12, 2020

GREENSFELDER, HEMKER & GALE, P.C.

By: /s/ Randall F. Scherck
Randall F. Scherck, #31085 (MO)
rscherck@greensfelder.com
10 South Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 241-9090
Facsimile: (314) 345-5488

Attorney for Defendant Pawnee Leasing Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of Court, using the CM/ECF system this 12th day of August, 2020 to be served on all counsel of record.

/s/ Randall F. Scherck

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
 TWENTY-FIRST JUDICIAL CIRCUIT
 STATE OF MISSOURI

DR. EBONI C. JANUARY,)	
Individually,)	
)	
And)	
)	
EJKJ, LLC,)	
A Limited Liability Company,	)	Cause No.: 20SL-CC03616
)	
Plaintiffs,	)	Division: 21
)	
Vs.)	
)	
INVASIX, INC., a Delaware Corporation,)	
d/b/a INMODE AESTHETIC)	
SOLUTIONS ("INMODE"),)	
)	
BALBOA CAPITAL CORPORATION,)	
a California Corporation,)	
)	
STEARNS BANK NATIONAL ASSOCIATION,)	
d/b/a STEARNS BANK EQUIPMENT FINANCE)	
DIVISION, a Minnesota Corporation,)	
)	
And)	
)	
PAWNEE LEASING CORPORATION,)	
a Colorado corporation,)	
)	
Defendants.)	

MEMORANDUM TO COURT

COME NOW Plaintiffs, by and through counsel, and hereby file Return of Service indicating personal service of their Petition and Summons upon Defendant Stearns Bank National Association, d/b/a Stearns Bank Equipment Finance Division by delivering a copy of same to Kelly Skalleky, President/CEO of said company on August 6, 2020. Plaintiff requests the amount of \$50.00 for said service, as reflected on the attached invoice, be taxed as costs.

Respectfully submitted,

FLUHR & MOORE, LLC.

/s/ Steven S. Fluhr
Steven S. Fluhr, MO #34365
9322 Manchester Road
St. Louis, MO 63119
(314)725-8002/Fax (314)725-8006
fluhrstl@aol.com
Attorney for Plaintiffs,
Dr. Eboni C. January and EJKJ, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was forwarded via the Missouri Courts e-file system to all attorneys of record this 17th day of August, 2020.

/s/Peggy R. Rothman



Stearns County Sheriff's Office

Civil Process Division

807 Courthouse Square

P.O. Box 217

St. Cloud, MN 56302

(320) 259-3720

ORIGINAL

SHERIFF'S DAILY RECORD / INVOICE

NO. 20-1333

RECEIVED:

07-24-2020

BILLING DATE: 08-10-2020

BILL TO: FLUHR & MOORE LLC: 9322 MANCHESTER ROAD, ST LOUIS MO
63119

=====

CASE: DR EBONI C JANUARY ET AL vs. INVESIX INC ET AL

FILE NO: 20S1-CC03616

PAPER TYPE: Summons and Petition

FOR SERVICE ON: STEARNS BANK NA

=====

ADVANCE DEPOSIT: 50.00

CK NO: 2123 / RECEIPT NO: 4392

TOTAL CHARGES: 50.00

BALANCE DUE: **\$PAID IN FULL**

PLEASE RETURN THIS STATEMENT WITH YOUR PAYMENT



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

ORIGINAL

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address: STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: STERNS BANK NATIONAL ASSOCIATION D/B/A STERNS BANK EQUIPMENT

Alias:

DBA: STEARNS BANK EQUIPMENT FINANCE

KELLY SKALICKY
4191 2ND STREET SOUTH
ST. CLOUD, MN 56301

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

15-JUL-2020

Date

Further Information:

LES

Joan P. Diney
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is Deputy Sheriff of Stearns County, Minnesota (state).
- I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to Kelly Skalicky (name) President/CEO (title).

☐ other (describe) _____

Served at _____ (address)
in Stearns County, Minnesota (state), on 08/06/2020 (date) at 1526 (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

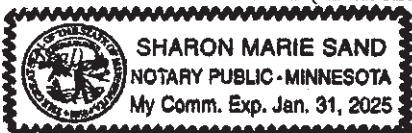
Subscribed and Sworn To me before this 10th (day) August (month) 2020 (year)

I am: (check one)

☐ the clerk of the court of which affiant is an officer.

☐ the judge of the court of which affiant is an officer.

☒ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)

☐ authorized to administer oaths. (use for court-appointed server)


Sharon Marie Sand
Signature and Title

Service Fees, if applicable

Summons	\$	_____
Non Est	\$	_____
Mileage	\$	_____ (_____ miles @ \$ _____ per mile)
Total	\$	_____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion and/or petition must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion and/or petition when offered to him, the return shall be prepared to show the offer of the officer to deliver the summons and motion and/or petition and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the individual personally or by leaving a copy of the summons and motion and/or petition at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and motion and/or petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion and/or petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. On a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory in the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri Court within 30 days after service.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: NANCY WATKINS MCLAUGHLIN	Case Number: 20SL-CC03616
Plaintiff/Petitioner: EBONI C. JANUARY	Plaintiff's/Petitioner's Attorney/Address STEVEN S. FLUHR 9322 MANCHESTER ROAD SAINT LOUIS, 63119
Defendant/Respondent: INVASIX, INC., D/B/A INMODE AESTHETIC SOLUTIONS DBA: INMODE AESTHETIC SOLUTIONS	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Tort	

RECEIVED

JUL 23 2020

COLE COUNTY
SHERIFF'S OFFICE

Summons in Civil Case

FILED

(State File Stamp)

AUG 17 2020

The State of Missouri to: BALBOA CAPITAL CORPORATION
Alias:R/A SOLUTIONS, INC
3225-A EMERALD LANE
JEFFERSON CITY, MO 65109

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

15-JUL-2020

Date

Further Information:
LESJOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
- ☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

Brenda Rieke

(name)

Designee

(title)

☐ other

Served at 3225 Emerald Ln Ste A Jefferson City MO 65101 (address)

in Cole (County/City of St. Louis), MO, on 07/29/2020 (date) at 12:45 pm (time).

Sheriff

Printed Name of Sheriff or Server

By

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on (date).

My commission expires:

Date

Notary/Public

2122

\$30

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

DR. EBONI C. JANUARY, Individually,)	
And EJKJ, LLC, A Limited Liability Company,)	
)	
Plaintiffs,	)	Cause No. 20SL-CC03616
)	
vs.	)	Division No. 21
)	
INVASIX, INC., d/b/a INMODE AESTHETIC)	
SOLUTIONS, et al.,)	
)	
Defendants.)	

**DEFENDANT PAWNEE LEASING CORPORATION'S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' PETITION**

Comes now Defendant Pawnee Leasing Corporation ("Pawnee"), by and through its attorney and for its answer and affirmative defenses to Plaintiffs' Petition states as follows:

1. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1 of Plaintiffs' petition and therefore denies same.
2. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 2 of Plaintiffs' petition and therefore denies same.
3. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 3 of Plaintiffs' petition and therefore denies same.
4. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 4 of Plaintiffs' petition and therefore denies same.
5. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 5 of Plaintiffs' petition and therefore denies same.
6. Pawnee admits the allegations in paragraph 6 of Plaintiffs' Petition.

7. Pawnee denies the allegations in paragraph 7 of Plaintiffs' Petition because Plaintiffs were not injured by any wrongful acts, fraud or misrepresentation of Pawnee and because Pawnee committed none of said acts.

8. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 8 of Plaintiffs' petition and therefore denies same. Pawnee further states that Exhibit 1 is a written document and speaks for itself and upon information and belief was not attached to the petition served on Pawnee.

9. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 9 of Plaintiffs' petition and therefore denies same. Pawnee further states that Exhibit 2 is a written document and speaks for itself and upon information and belief was not attached to the petition served on Pawnee.

10. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 10 of Plaintiffs' petition and therefore denies same. Pawnee further states that Exhibit 3 is a written document and speaks for itself and upon information and belief was not attached to the petition served on Pawnee.

11. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the statement "the transaction to purchase the equipment" and further denies that Plaintiff EJKJ, LLC was required to enter into an Equipment Finance Agreement with Pawnee unless said Plaintiff agreed to or desired to lease or finance certain equipment through Pawnee as its response to paragraph 11. In no way did Pawnee require said Plaintiff to enter into any Equipment Finance Agreement with Pawnee unless Pawnee was financing the transaction.

12. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 12 of Plaintiffs' petition and therefore denies same.

13. Pawnee is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 13 of Plaintiffs' petition and therefore denies same.

14. Pawnee denies each and every allegation in paragraph 14 and its subparts and holds Plaintiffs to strict proof thereof.

15. Pawnee denies the allegations in paragraph 15 as they apply to Pawnee and hold Plaintiffs to strict proof thereof.

16. Pawnee denies the allegations in paragraph 16 as they apply to Pawnee and hold Plaintiffs to strict proof thereof.

17. Pawnee denies the allegations in paragraph 17 as they apply to Pawnee and hold Plaintiffs to strict proof thereof.

18. Pawnee denies the allegations in paragraph 18 as they apply to Pawnee and hold Plaintiffs to strict proof thereof.

19. Pawnee denies the allegations in paragraph 19 as they apply to Pawnee and hold Plaintiffs to strict proof thereof.

AFFIRMATIVE DEFENSES

20. By way of further answer and affirmative defense, Pawnee states that Plaintiffs have failed to state a claim on which relief may be granted against Pawnee.

21. By way of further answer and affirmative defense, Pawnee states that the alleged requirement to execute an Equipment Finance Agreement with Pawnee would only have occurred if Plaintiffs had agreed to do so to finance the lease or purchase of certain equipment.

22. By way of further answer and affirmative defense, Pawnee states that Plaintiffs' claim is barred by its own actions in voluntarily executing any Equipment Finance Agreement with Pawnee.

23. By way of further answer and affirmative defense, Pawnee states that Plaintiffs have failed to attach to their petition or specifically identify the Equipment Finance Agreement Plaintiff EJKL, Inc. allegedly entered into with Pawnee as stated in paragraph 11 of Plaintiffs' petition.

24. By way of further answer and affirmative defense, Pawnee states that Plaintiff Dr. January could not have been damaged by any of the actions allegedly committed by Pawnee and has no cause of action against Pawnee since such Plaintiff did not enter into any agreement with Pawnee which was the asserted result of the statements allegedly made by Pawnee in paragraph 14 and its subparts.

25. By way of further answer and affirmative defense, Pawnee states that Plaintiffs have failed to allege with specificity the representations made by Pawnee in paragraph 14 and its subparts.

26. By way of further answer and affirmative defense, Pawnee states that Plaintiffs have failed to allege which representations were made by Pawnee in paragraph 14 and its subparts.

28. By way of further answer and affirmative defense, Pawnee states that any liability or damages sustained by Plaintiffs as described in their petition were a result of actions of others and not Pawnee.

27. Pawnee reserves the right to supplement its answer and affirmative defenses should additional information become available through discovery or otherwise.

WHEREFORE, Defendant Pawnee Leasing Corporation prays that it be dismissed, for its costs and for such other and further relief as this Court deems just and proper.

Dated: August 21, 2020

GREENSFELDER, HEMKER & GALE, P.C.

By: /s/ Randall F. Scherck
Randall F. Scherck, #31085 (MO)
rscherck@greensfelder.com
10 South Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 241-9090
Facsimile: (314) 345-5488

Attorney for Defendant Pawnee Leasing Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of Court, using the CM/ECF system this 21st day of August, 2020 to be served on all counsel of record.

/s/ Randall F. Scherck

1870361v1

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

DR. EBONI C. JANUARY, Individually, and)	
EJKJ, LLC a Limited Liability Company,)	
)	
Plaintiffs,	)	Cause No.: 20SL-CC03616
)	
vs.	)	Division: 21
)	
INVASIX, INC., d/b/a INMODE AESTHETIC	)	JURY TRIAL REQUESTED
SOLUTIONS, et al.,	)	ON ALL ISSUES TRIABLE TO
	)	A JURY
Defendants.)	
)	

ENTRY OF APPEARANCE

COMES NOW Robert W. Stephens and Swanson, Martin & Bell, LLP, and hereby enter their appearance on behalf of Defendant Balboa Capital Corporation.

SWANSON, MARTIN & BELL, LLP

By: /s/ Robert W. Stephens, #57505

Attorneys for Defendant,

BALBOA CAPITAL CORPORATION

Robert W. Stephens, #57505

Joseph Kincaid

SWANSON, MARTIN & BELL, LLP

800 Market Street, Suite 2100

St. Louis, MO 63101

(314) 241-7100

rstephens@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing was electronically filed and served via the Missouri Courts eFiling System, this 28th day of August, 2020, to all counsel of record, including:

Steven S. Fluhr
FLUHR & MOORE< LLC
Attorneys for Plaintiffs
9322 Manchester Road
St. Louis, MO 63119
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/s/ Robert W. Stephens, #57505



EQUIPMENT FINANCE AGREEMENT

Agreement No. 294119-000

DEBTOR ("you" or "your"): EJKJ, LLC		TERM: 66
ADDRESS: 910 MORRISON AVE St. Louis, MO 63104	EQUIPMENT LOCATION ADDRESS: 3915 Watson Road St. Louis, MO 63109	PAYMENT SCHEDULE: 1-6 @ \$99.00, 7-66 @ \$3,558.21

COLLATERAL: Items of personal property as generally described herein which Balboa Capital Corporation and Debtor agree that a more detailed description of the property being financed shall be maintained by us among our books and records in whatever more detailed description of the property financed is received from the supplier of such property and, absent manifest error, such detailed description shall be considered incorporated into this Equipment Finance Agreement and shall be provided to Debtor promptly upon request.

Number of Advances: 1 **applied as:** 1 **First** **Security Deposit:** \$0.00
Documentation Fee: \$350.00 **Total due in Advance (advance plus doc fee):** \$449.00
PERSONAL PROPERTY DESCRIPTION: See Invoices attached hereto as Exhibit A1 and incorporated herein by this reference

Agreement. Balboa Capital Corporation ("Creditor", "we", "us", or "our") agrees to lend to Debtor and you agree to borrow from us an amount for the financing of the Collateral. You authorize us to pay the supplier(s) for the collateral and acknowledge delivery and acceptance of the collateral. You authorize us to commence this agreement. Amounts received by us under this Equipment Finance Agreement ("EFA") shall be applied as we determine. Debtor promises to pay to Creditor the Payments set forth above, plus the prorated rent as described in this paragraph. Payments may be adjusted upward or downward no more than ten percent (10%) to reflect actual costs. The first Payment is due at the commencement of Creditor's applicable billing cycle as specified by Creditor; each subsequent Payment is due on the same date of each preceding month until all Payments have been received by Creditor. Each date a Payment is due is a "Due Date" and in addition to the Payment due on the first Due Date, Debtor agrees to pay us prorated rent for an amount equal to 1/30th of the Payment amount for each day calculated from the date Creditor paid the vendor until the first Due Date (the "Prorated Rent"). Debtor acknowledges that: a) Creditor may charge up to thirty (30) days of Prorated Rent in Creditor's sole discretion; and b) the Prorated Rent is not credited against the Payments set forth above. Any amount not paid when due is subject to a late charge of the lower of 10% of such amount or the highest amount allowed by law.

Grant of Security Interest. You hereby grant to us a security interest in the Collateral and all proceeds to secure all of your obligations under this EFA.

Disclaimer of Warranties and Claims. We make no representation or warranty to any matter whatsoever including the merchantability or fitness for a particular purpose of the Collateral. This EFA is irrevocable. Your obligation to pay all amounts payable hereunder is non-cancellable, absolute, and unconditional and will not be subject to any reduction, setoff, defense, counterclaim, deferment or recoupment for any reason, even if the Collateral is damaged, destroyed or defective. You acknowledge you selected the Collateral and the supplier and your supplier is not our agent nor are we their agent. You acknowledge that no one, including the supplier, has been authorized to waive or change any term or condition of this EFA. No representation by the supplier as to any matter shall bind us or affect your duty to pay all amounts and perform all obligations hereunder. You will use the Collateral for commercial purposes only, in compliance with the law and not for any personal, family or household use.

Collateral. You will not modify or change location of the Collateral without our proper consent and allow us to inspect it upon our request. At your expense you will maintain the Collateral in good operation condition and repair. You will keep the Collateral free and clear from all liens and encumbrances. Titled Collateral will be titled and/or registered as we direct. You are responsible for any damage or destruction of the Collateral. You will at our election repair the Collateral at your expense or pay to us all amounts then due and owing plus the total of all unpaid Payments for the Term discounted at 3%. You will indemnify and hold us, our member, managers and employees harmless from and against any claims, costs, expenses, damages and liabilities, in any way relating to the Collateral.

Fees and Taxes. You agree to pay when due and to hold us harmless from all taxes, interest and penalties relating to this EFA and the Collateral ("Taxes") and reimburse us for those Taxes we pay on your behalf. If we pay any of the above for you, you agree to reimburse us and to pay us a processing fee for each payment we make on your behalf. In addition, you also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs and expenses involved in documenting and servicing this transaction. You further agree to pay us an origination fee on or before the date the first payment is due and a termination fee. You also acknowledge that in addition to the other obligations due under this EFA, we may assess and you may be required to pay additional taxes and/or fees including an invoice fee. Such fees may not only cover our costs they may also include a profit. You will indemnify us against the loss of any tax benefits arising out of your acts or omissions.

Insurance. During the Term you will maintain insurance we specify on the Collateral. If you do not provide us satisfactory proof of insurance we may, but are not required, to buy such insurance for our benefit and add charges which any result in a higher premium you would pay if you obtained insurance, plus an interest charge. At our option, in lieu of obtaining or continuing insurance, we may require you to pay a monthly additional fee up to 2% of the cost of the Collateral. This fee is not calculated with reference to additional risk nor constitutes additional profit for us, but represents the basis on which we are willing to forbear from exercising remedies and continue this EFA without the required insurance. You will receive no insurance coverage and will not be released from any obligation under this EFA. We are not selling insurance. We will cease charging the additional fee or billing for insurance 30 days after you provide satisfactory proof of insurance.

By signing below Debtor hereby irrevocably accepts the Collateral under the EFA and irrevocably authorizes Creditor to pay the supplier on behalf of the Debtor. The person executing this EFA is authorized to do so, making this EFA the valid and binding act of the Debtor.

Debtor Name: EJKJ, LLC	Accepted By: Balboa Capital Corporation
By:	By:
Print Name and Title: Eboni January Member	Title: Vice President
Date:	Date: 4/5/2019

GUARANTY: You (jointly and severally if more than one) unconditionally guarantee to us and our assigns the payment and performance when due of all of the obligations of the Debtor under this EFA and all related documents executed by the Debtor ("Agreement"). We may proceed against you before proceeding against the Debtor, the Collateral or enforce any other remedy. Notwithstanding any changes made to the Agreements in our dealings with Debtor, this Guaranty will remain in effect as changed even if you are not notified of the changes and will remain in effect even if the Agreements are no longer enforceable against the Debtor. You waive all notices to which you may have a right. You agree to pay us all our expenses in enforcing this Guaranty. You may not assign this Guaranty without our written consent. The governing law, jurisdiction and venue provisions of the EFA shall apply to any action to enforce this Guaranty. You consent to our conducting a credit evaluation of you from all sources, periodically updating it and sharing the results with others.

Guarantor's Signature:	Print Name: Eboni January	Date: 3/7/19
Guarantor's Signature:	Print Name:	Date:

AUTHORIZATION FOR ACH PAYMENTS: Debtor authorizes Creditor, Creditor's successors and assigns to automatically initiate and make debit entry charges to Debtor's bank account indicated below, or the account from which the Debtor paid any deposit or fee in conjunction with the execution of this EFA, or any account from which Debtor paid any obligation under this EFA, or the account from which a cancelled or voided check provided by the Debtor can be drawn, for the payment of all amounts owed by Debtor from time to time under the EFA. This authorization is to remain in effect during the term of the EFA. Any incorrect charge will be corrected upon notification to Creditor, by either a credit or debit to Debtor's account.

Bank Name:	Acct Holder Name:
Account No:	ABA No:
Authorized Signature:	Print Name and Title: Eboni January Member Date: 3/7/19

EFASP1296B

EXHIBIT A

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

DR. EBONI C. JANUARY, Individually, and)	
EJKJ, LLC a Limited Liability Company,)	
)	
Plaintiffs,	)	Cause No.: 20SL-CC03616
)	
vs.	)	Division: 21
)	
INVASIX, INC., d/b/a INMODE AESTHETIC	)	JURY TRIAL REQUESTED
SOLUTIONS, et al.,	)	ON ALL ISSUES TRIABLE TO
	)	A JURY
Defendants.)	

**DEFENDANT BALBOA CAPITAL CORPORATION'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS'
PETITION FOR DAMAGES**

COMES NOW Balboa Capital Corporation (*hereinafter "Balboa"*), by and through its attorneys, Swanson, Martin & Bell, LLP, and pursuant to Missouri Supreme Court Rule 55.27, and submits this Memorandum in Support of its Motion to Dismiss Plaintiffs' Petition for Damages because Plaintiffs' cause of action as to Balboa is predicated upon an Equipment Finance Agreement No. 29411-000 (*attached hereto as Exhibit A*), which contains an enforceable forum section clause. On the basis of the Equipment Finance Agreement's forum selection clause, Orange County, California is the sole proper jurisdiction and venue to interpret and enforce the Equipment Finance Agreement. Pursuant to Missouri law, as set forth herein, this Court should dismiss the instant cause of action in favor of Orange County, California.

FACTS

1. Balboa is, and at all times relevant herein, was a California corporation in good standing which has its principal office and place of business in Costa Mesa, California and is authorized to do business in the state of Missouri.

2. While Balboa is registered to do business in the state of Missouri, Balboa does not now have and has never had offices in the state of Missouri.

3. On or about March 7, 2019, Plaintiff EJKJ, LLC executed the Equipment Finance Agreement.

4. On March 7, 2019, Plaintiff Dr. Eboni C. January executed a Guaranty of the Equipment Finance Agreement.

5. Plaintiff Dr. Eboni C. January is an officer, director, shareholder, agent, member, and/or owner of Plaintiff EJKJ, LLC.

6. On or about April 5, 2019, Balboa executed and delivered to Plaintiff EJKJ, LLC the fully executed Equipment Finance Agreement.

7. The Equipment Finance Agreement entered into between the parties, contains the following provision:

GENERAL: This EFA shall be governed and construed under the laws of the State of California without reference to its principle of conflicts of laws and is deemed to have been made and performed in Orange County, CA. You submit to the jurisdiction of CA and agree that the CA state courts and/or the United States District Court for the Central District of California, Santa Ana Division, shall have exclusive jurisdiction over any action or proceeding to enforce this EFA or any action or proceeding arising out of this EFA. (*Exhibit A*)

8. Additionally, the Equipment Finance Agreement includes the following:

This EFA as well as the Delivery and Acceptance receipt(s) for the Collateral constitute the entire agreement between the parties, and supersede all prior negotiations, written or oral, including any written offer or proposal describing and/or summarizing the terms of any proposed lease/financing. (*Exhibit A*)

ARGUMENT

Plaintiffs' cause of action as to Balboa is solely and completely predicated upon the Equipment Finance Agreement No. 29411-000 executed between the parties on April 5, 2019.

The Equipment Finance Agreement contains an enforceable forum section clause, which was set forth above. Missouri courts enforce forum selection clauses.

In *Major v. McCallister*, 302 S.W.3d 227, 229 (Mo. Ct. App. 2009), the Missouri Court of Appeals stated:

We should honor the forum selection clause unless it is unfair or unreasonable to do so. *Burke v. Goodman*, 114 S.W.3d 276, 279–80 (Mo.App.2003)(citing *High Life Sales Co. v. Brown-Forman Corp.*, 823 S.W.2d 493, 497 (Mo. banc 1992)). The party resisting such a clause generally bears a heavy burden to show why it should not be held to its bargain. *Id.* at 280 (citing *Whelan Sec. Co. v. Allen*, 26 S.W.3d 592, 596 (Mo.App.2000)).

In *High Life Sales Co. v. Brown-Forman Corp.*, 823 S.W.2d 493 at 497 (Mo. 1992), the Missouri Supreme Court, in concluding that Missouri should no longer treat outbound forum selection clauses as per se violations of public policy, joined “the better-reasoned majority rule and will enforce such clauses, so long as doing so is neither unfair nor unreasonable”.

In *Burke v. Goodman*, 114 S.W.3d 276, 280 (Mo. Ct. App. 2003), the court held that “the party resisting enforcement of the forum selection clause bears a heavy burden in convincing the court that he or she should not be held to the bargain”, citing *Whelan Sec. Co., Inc.*, 26 S.W.3d 592 at 596. The *Burke* court went on to opine that “a clause that provides that the litigation shall be brought at the principal place of business of the defendant, mitigates in favor of fairness and discourages hasty litigation because a “race to the courthouse by either party puts the lawsuit in the opponent's backyard.” See *High Life Sales Co.*, 823 S.W.2d at 497.”

CONCLUSION

Plaintiffs’ cause of action as to Balboa is solely and completely predicated upon the Equipment Finance Agreement No. 29411-000 executed between the parties on April 5, 2019. This Equipment Finance Agreement requires that where there are differences between the

parties, a California court sitting in Orange County, California will apply California law to govern the contractual relationship.

WHEREFORE, for the reasons stated above, Defendant Balboa Capital Corporation respectfully moves this Honorable Court to dismiss the instant case against it, and for such other and further relief as the court deems just and proper.

SWANSON, MARTIN & BELL, LLP

By: /s/ Robert W. Stephens, #57505

Attorneys for Defendant,

BALBOA CAPITAL CORPORATION

Robert W. Stephens, #57505

Joseph Kincaid

SWANSON, MARTIN & BELL, LLP

800 Market Street, Suite 2100

St. Louis, MO 63101

(314) 241-7100

rstephens@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing was electronically filed and served via the Missouri Courts eFiling System, this 28th day of August, 2020, to all counsel of record, including:

Steven S. Fluhr
FLUHR & MOORE, LLC
Attorneys for Plaintiff's
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10 South Broadway, Suite 2000
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(314) 241-9090
rscherck@greensfelder.com

By: /s/ Robert W. Stephens, #57505

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
TWENTY-FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI**

DR. EBONI C. JANUARY, Individually, and)	
EJKJ, LLC a Limited Liability Company,)	
)	
Plaintiffs,	)	Cause No.: 20SL-CC03616
)	
	)	Division: 21
vs.)	
	)	JURY TRIAL REQUESTED
INVASIX, INC., d/b/a INMODE AESTHETIC	)	ON ALL ISSUES TRIABLE TO
SOLUTIONS, et al.,	)	A JURY
)	
Defendants.)	
)	

**DEFENDANT BALBOA CAPITAL CORPORATION'S
MOTION TO DISMISS PLAINTIFFS' PETITION FOR DAMAGES**

COMES NOW Balboa Capital Corporation (*hereinafter* "Balboa"), by and through its attorneys, Swanson, Martin & Bell, LLP, and pursuant to Missouri Supreme Court Rule 55.27, moves this Court to dismiss Plaintiffs' Petition for Damages because Plaintiffs' cause of action as to Balboa is predicated upon an Equipment Finance Agreement No. 29411-000, which contains an enforceable forum section clause. Plaintiffs' agreed that the Equipment Finance Agreement (*attached to Balboa's Memorandum in Support of Motion to Dismiss and identified as Exhibit A*) would be governed by the laws of the State of California and consented to jurisdiction in the County of Orange. The Equipment Finance Agreement provides, in pertinent part, as follows:

GENERAL: This EFA shall be governed and construed under the laws of the State of California without reference to its principle of conflicts of laws and is deemed to have been made and performed in Orange County, CA. You submit to the jurisdiction of CA and agree that the CA state courts and/or the United States District Court for the Central District of California, Santa Ana Division, shall have

exclusive jurisdiction over any action or proceeding to enforce this EFA or any action or proceeding arising out of this EFA.

Missouri courts honor and enforce forum selection clauses agreed upon by the parties where such enforcement is not unreasonable. *Major v. McCallister*, 302 S.W.3d 227 (Mo. C.A. So. D. 2009); and *Burke v. Goodman*, 114 S.W.3d 276 (Mo. C.A. E.D. 2003).

Because the forum selection cause expressly governs the Equipment Finance Agreement upon which Plaintiffs' claims are predicated, Balboa respectfully requests that the Court issue an order dismissing this cause of action in the State of Missouri and County of St. Louis, as these are not the contractually sanctioned jurisdiction and venue for actions predicated upon the Equipment Finance Agreement agreed upon by the parties.

Balboa hereby incorporates its concurrently filed Memorandum in Support of its Motion to Dismiss by reference herein.

WHEREFORE, for the reasons stated above, Defendant Balboa Capital Corporation respectfully moves this Honorable Court to dismiss the instant case against it, and for such other and further relief as the court deems just and proper.

SWANSON, MARTIN & BELL, LLP

By: /s/ Robert W. Stephens, #57505

Attorneys for Defendant,

BALBOA CAPITAL CORPORATION

Robert W. Stephens, #57505

Joseph Kincaid

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rstephens@smbtrials.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing was electronically filed and served via the Missouri Courts eFiling System, this 28th day of August, 2020, to all counsel of record, including:

Steven S. Fluhr
FLUHR & MOORE, LLC
Attorneys for Plaintiffs
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St. Louis, MO 63119
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Randall F. Scherck
GREENSFELDER, HEMKER & GALE, P.C.
Attorneys for Defendant Pawnee Leasing Corporation
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St. Louis, MO 63102
(314) 241-9090
rscherck@greensfelder.com

By: /s/ Robert W. Stephens, #57505

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

DR. EBONI C. JANUARY, Individually,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.	)	Cause No.: 20SL-CC03616
)	
	)	Division No.: 21
INVASIX, INC., d/b/a INMODE)	
AESTHETIC SOLUTIONS, et al.,)	
)	
Defendants.)	

**ENTRY OF APPEARANCE AND CONSENT MOTION FOR ADDITIONAL TIME
FOR DEFENDANT TO FILE RESPONSIVE PLEADINGS**

COME NOW J. Patrick Chassaing and Helmut Starr of Curtis, Heinz, Garrett & O’Keefe, P.C., and enter their appearances on behalf of defendant Invasix, Inc., d/b/a Inmode Aesthetic Solutions (“Inmode”), and request that the clerk duly forward notices of all filings herein by the Court’s CM/ECF System. Also, Inmode hereby requests, with consent of Plaintiffs’ counsel, Steven S. Fluhr, Esq., that the Court grant Inmode’s request for 14 additional days to file an Answer or other responsive pleading, up to and including September 14, 2020.

CURTIS, HEINZ, GARRETT & O’KEEFE, P.C.

By: /s/Helmut Starr
J. Patrick Chassaing, #27246
Helmut Starr, #32899
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COUNSEL FOR DEFENDANT INMODE

CERTIFICATE OF SERVICE

The undersigned hereby certifies a copy of the foregoing was filed with the Court's electronic case management system on this 31st day of August, 2020, upon all counsel of record.

/s/Helmut Starr

Helmut Starr

SO ORDERED this _____ day of _____, 2020

Hon. Nancy Watkins McLaughlin, Division 21